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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/865,441	05/29/2001	Doug Grumann	10002687-1	3760

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HEWLETT PACKARD COMPANY
P O BOX 272400, 3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

EXAMINER	
YIGDALL, MICHAEL J	
ART UNIT	**PAPER NUMBER**
2192	

DATE MAILED: 09/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/865,441	GRUMANN, DOUG	
	Examiner	Art Unit	
	Michael J. Yigdall	2192	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 June 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6 and 8-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6 and 8-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 30, 2006 has been entered. Claims 1-6 and 8-20 are pending.

Response to Arguments

2. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection, as set forth below with reference to Lam. Applicant's amendment necessitated the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-6 and 8-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,590,056 to Barritz (art of record, "Barritz") in view of U.S. Patent No. 6,301,615 to Kutcher (art of record, "Kutcher") in view of U.S. Patent No. 6,272,677 to Lam et al. (now made of record, "Lam").

With respect to claim 1 (currently amended), Barritz discloses a method for automatically configuring performance management software in a computer system (see, for example, the abstract), comprising:

(a) inventorying applications (see, for example, column 9, lines 23-27, which shows a surveying program 12 for inventorying executable files or applications);

(b) generating an inventory list of the applications (see, for example, column 9, lines 27-33, which shows generating a system configuration log 66 or inventory list of the applications).

Although the monitoring and reporting programs disclosed by Barritz (see, for example, monitoring program 22 and reporting program 60 in FIG. 1) and other such performance management tools are inherently executable files, Barritz is silent as to whether any of the executable files included in the inventory are performance management tools.

However, Kutcher discloses a method for configuring performance management software (see, for example, column 10, lines 23-43) based on a plurality of preexisting performance management tools (see, for example, column 2, lines 30-34 and column 4, lines 26-30). Kutcher further discloses listening for or inventorying newly started performance management tools, so as to include the additional tools in the configuration (see, for example, column 10, line 64 to column 11, line 11). By leveraging the performance management tools provided by the operating system, the need for updates due to changes in the operating system is reduced (see, for example, column 4, lines 38-52).

One of ordinary skill in the art would have been motivated to apply the method of Barritz to a plurality of preexisting performance management tools, such as taught by Kutcher. For example, Barritz discloses that different operating systems provide different mechanisms by

which monitoring program 22 can "see" events (see, for example, column 7, lines 51-55). In view of Kutcher, a plurality of such monitoring programs would be provided for the different mechanisms provided by the different operating systems. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the performance management tools in the inventory.

Although Barritz also discloses that the inventory provides system configuration information to the reporting program 60 (see, for example, column 8, lines 36-42), and thus the system configuration log 66 is considered to be a performance management tools configuration, Barritz does not expressly disclose:

(c) using the inventory list, generating a performance management tools configuration consisting of application-specific interfaces, performance thresholds, collection parameters and alarms applicable to specific performance management tools and the current operating system environment.

However, Kutcher further discloses that the configuration includes filters (see, for example, column 10, lines 23-43), which are application-specific interfaces for each performance management tool (see, for example, column 8, lines 43-48). The filters or interfaces enable the use of performance management tools that have disparate output formats (see, for example, column 5, lines 22-26 and column 6, lines 10-14).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to supplement the configuration generated by Barritz with application-specific interfaces, such as taught by Kutcher. The modification would enable the use of a plurality of preexisting performance management tools that have disparate output formats.

Moreover, Barritz also discloses that the monitoring program 22 may be configured to monitor whether the licensed number of users has been exceeded and to issue a warning message (see, for example, column 10, line 50 to column 11, line 3). The number of concurrent users permitted and the warning message are considered a performance threshold and an alarm, respectively. Likewise, Barritz also discloses that the monitoring program 22 may be configured to operate constantly or for a sampling period (see, for example, column 9, lines 55-62), which is considered a collection parameter. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the performance threshold, alarm and collection parameter in the configuration.

Although Barritz also discloses restarting the performance management software to engage the configuration of the performance management tools (see, for example, FIG. 6, which shows engaging the configuration at step 310 each time the reporting program is started or restarted at step 300, and note that the reporting program is inherently restarted to engage the latest configuration after the surveying program itself is restarted, as in column 4, lines 56-63), Barritz does not expressly disclose:

(d) automatically restarting, without intervention of an administrator, the performance management software to engage the configuration of the performance management tools.

However, Lam discloses automatically restarting software to engage a new configuration of the software (see, for example, column 4, lines 12-40), so as to eliminate the need for manual intervention (see, for example, column 4, lines 40-45).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to supplement the method of Barritz such that the restarting step is performed

automatically, as taught by Lam. One of ordinary skill in the art would have been motivated to eliminate the need for manual intervention.

With respect to claim 2 (original), the rejection of claim 1 is incorporated, and Barritz also discloses the limitation wherein the method is executed upon start up of the computer system (see, for example, column 4, lines 53-56, which shows executing the method when it is first introduced on a computer system, i.e. upon start up of the computer system).

With respect to claim 3 (original), the rejection of claim 1 is incorporated, and Barritz also discloses the limitation wherein the method is executed on demand (see, for example, column 4, lines 50-53, which shows executing the method by an operator or interactive user, i.e. on demand).

With respect to claim 4 (original), the rejection of claim 1 is incorporated, and Barritz also discloses the limitation wherein the method is executed periodically (see, for example, column 4, lines 50-53, which shows executing the method periodically).

With respect to claim 5 (original), Barritz also discloses the limitation wherein the method is executed automatically (see, for example, column 4, lines 50-53, which shows executing the method by another program, i.e. automatically).

With respect to claim 6 (original), the rejection of claim 1 is incorporated. Although Barritz discloses writing the inventory such that the information can be displayed and manipulated by well-known programs (see, for example, column 9, lines 34-40), Barritz does not expressly disclose the limitation wherein the step of generating the inventory list comprises

writing inventory information to an ASCII-format file. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the inventory of Barritz as an ASCII-format file, so as to further ensure that the information can be displayed and manipulated by well-known programs.

With respect to claim 8 (original), the rejection of claim 1 is incorporated, and Barritz also discloses the limitation wherein the inventory step comprises inventorying installed application programs and installed performance management tools (see, for example, column 9, lines 27-29, which shows surveying or inventorying products installed on the computer system).

With respect to claim 9 (original), the rejection of claim 8 is incorporated, and Barritz also discloses inventorying active application programs and active performance management tools, wherein the active application programs and performance management tools are flagged to indicate an active status (see, for example, column 6, lines 58-65, which shows recording or inventorying active programs and an indication of whether the program is loaded from a library or is resident, i.e. an indication of the active status or a flag indicating the active status).

With respect to claim 10 (original), the rejection of claim 1 is incorporated, and Barritz also discloses:

(a) manually amending the inventory list (see, for example, column 11, lines 16-25, which shows manually amending the inventory); and

(b) repeating the step of generating the performance management tools configuration (see, for example, column 11, line 63 to column 12, line 4, which shows repeating the step of generating the system configuration log).

With respect to claim 11 (original), the rejection of claim 1 is incorporated, and Barritz also discloses storing the inventory list and the performance management tools configuration in a memory (see, for example, column 5, lines 35-40, which shows storing the system configuration log in memory).

With respect to claims 12 (currently amended) and 13-18 (original), the claims recite an apparatus that corresponds to the method recited in claims 1, 2, 4-6 and 8-10 (see the rejection of claims 1, 2, 4-6 and 8-10 above).

With respect to claims 19 (currently amended) and 20 (original), the claims recite a method that corresponds to the method recited in claims 1 and 8-10 (see the rejection of claims 1 and 8-10 above).

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Yigdall whose telephone number is (571) 272-3707. The examiner can normally be reached on Monday through Friday from 7:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MY

Michael J. Yigdall
Examiner
Art Unit 2192

mjy

TUAN DAM
SUPERVISORY PATENT EXAMINER